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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TREASURE ISLAND, LLC,

Plaintiff,

vs.

AFFILIATED FM INSURANCE CO.,

Defendant.

Case No.: 2:20-cv-00965-JCM-EJY

**JOINT PRE-TRIAL
ORDER**

After pretrial proceedings in this case, IT IS SO ORDERED:

I. DESCRIPTION OF ACTION

This is a breach of contract action arising out of Plaintiff Treasure Island, LLC's claim for insurance coverage under an "all risks" insurance policy sold by Affiliated FM Insurance Company ("AFM").

II. JURISDICTION

Statement of jurisdiction: This action was originated by the filing of a Complaint in the United States District Court for the District of Nevada, Clark County, Nevada on May 28, 2020.

III. ADMITTED FACTS¹

The following facts are admitted by the Parties and require no proof:

1. Treasure Island operates a resort and casino of the same name located at 3300 Las Vegas Boulevard South (hereinafter, "Treasure Island").
2. AFM is an insurance company that is authorized to do business and issue insurance policies in the State of Nevada.
3. Treasure Island purchased an "all risks" insurance policy number GS784 from Affiliated FM Insurance company (hereinafter "AFM") for the policy period of March 20, 2019 to March 20, 2020 (hereinafter the "Policy").
4. Treasure Island paid the premium owed to AFM under the Policy.
5. AFM drafted the Policy.
6. Treasure Island's resort and casino, located at 3300 Las Vegas Boulevard South, Las Vegas, is an insured location under the Policy.

¹ The Parties reserve the right to amend and/or supplement the statement of Admitted Facts subject to the Court's ruling on AFM's Motion for Reconsideration (ECF No. 302) within a reasonable time after the Court issues its decision and order thereon.

- 1 7. The Policy covers Treasure Island against “ALL RISKS OF PHYSICAL LOSS OR
2 DAMAGE, except as hereinafter excluded”
- 3 8. Per the Policy, the “Property Insured” is “Real Property in which the Insured has an
4 insurable interest” and “Personal Property” at Treasure Island, unless excluded.
- 5 9. “Land, water or any substance in or on land” are expressly excluded from the
6 “Property Insured.”
- 7 10. The Policy covers “Business Interruption loss . . . as a direct result of physical loss or
8 damage.”
- 9 11. The Policy does not define the term “physical loss or damage.”
- 10 12. With respect to its claim against AFM, Treasure Island is exercising the “Gross
11 Earnings” option of Business Interruption Coverage.
- 12 13. Gross Earnings Business Interruption Coverage covers actual loss sustained by
13 Treasure Island as a direct result of physical loss or damage during the “Period of
14 Liability,” as calculated according to the formula specified in the Policy.
- 15 14. The “Period of Liability” is defined as “starting from the time of physical loss or
16 damage of the type insured” and “[e]nding when, with due diligence and dispatch . . .
17 [t]he lost or damaged property could be repaired or replaced and made ready for
18 production or business operations or services under the same or equivalent physical
19 operating conditions that existed prior to the loss or damage”
- 20 15. The Policy does not define the term “repair.”
- 21 16. The “Period of Liability” is extended up to 365 days “to restore the . . . business to the
22 condition that would have existed had the loss not happened.”
- 23 17. The limit on the Gross Earnings Business Interruption Coverage is \$327 million.

1 18. The Policy requires Treasure Island to mitigate its Business Interruption loss through
2 “[t]he use of any property or service owned or controlled by [Treasure Island].” .

3 19. “Communicable disease” is defined in the Policy as “disease which is . . .
4 transmissible from human to human by direct or indirect contact with an affected
5 individual or individual’s discharges.”
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7 20. COVID-19 satisfies the Policy’s definition of “Communicable disease.”

8 21. The Policy also contains two coverage grants for Communicable Disease.

9 22. Each coverage grant for communicable disease is sublimited to \$100,000.

10 23. The Policy contains an exclusion for contamination.

11 24. The Policy defines the term “contamination” as “any condition of property due to the
12 actual or suspected presence of any foreign substance, impurity, pollutant, hazardous
13 material, poison, toxin, pathogenic or pathogenic organism, bacteria, virus, disease
14 causing or illness causing agent, fungus, mold or mildew.”The Policy also contains an
15 exclusion for “Any loss during any idle period,” including “when ...operations or
16 services ... would not have taken place or would have been prevented due to: a)
17 Physical loss or damage not insured by this Policy; b) Planned or rescheduled
18 shutdown; c) Strike or other work stoppage; d) Any other reason other than physical
19 loss or damage insured under this Policy.”
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22 25. COVID-19 is a communicable disease.

23 26. SARS-CoV-2 is the causative virus of COVID-19.

24 27. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak
25 a global pandemic.
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1 28. On March 13, 2020, the President of the United States declared a national emergency
2 concerning COVID-19.

3 29. On March 17, 2020, the Governor of Nevada verbally ordered all gaming
4 establishments to close as of that same day at 11:59 pm.

5 30. The Governor of Nevada formalized his verbal order in Directive 002 issued on
6 March 18, 2020.

7 31. On March 19, 2020, AFM received Treasure Island's notice of claim under the Policy.

8 32. Treasure Island remained closed from March 18, 2020 through June 3, 2020
9 (hereinafter the "Closure Period").

10 33. Treasure Island reopened on June 4, 2020.

11 **IV. UNCONTESTED FACTS²**

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13
14 The following facts, though not admitted, will not be contested at trial by evidence to the
15 contrary:

- 16 1. Treasure Island consists of multiple interconnected buildings spread over 20 acres of
17 land with approximately 2.2 million square feet of indoor space.
- 18 2. Treasure Island's buildings include a three-tower hotel with 2,884 guest rooms, a
19 casino with over 1,200 interactive gaming attractions, and 28 food and beverage,
20 retail, entertainment, and other staffed amenities and attractions.
- 21 3. Treasure Island employs approximately 2,500 individuals when fully operational.
- 22 4. Treasure Island is ordinarily open to the public twenty-four hours a day, seven days
23 per week.
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27 ² The Parties reserve the right to amend and/or supplement the statement of Uncontested Facts subject to the
28 Court's ruling on AFM's Motion for Reconsideration (ECF No. 302) within a reasonable time after the Court issues
its decision and order thereon.

V. ISSUES OF FACT TO BE DETERMINED AT TRIAL³

The following are the issues of fact to be tried and determined at trial:

A. Treasure Island—whether the following facts are true:

1. Treasure Island consists of multiple interconnected buildings spread over 20 acres of land with approximately 2.2 million square feet of indoor space.
2. Treasure Island’s buildings include a three-tower hotel with 2,884 guest rooms, a casino with over 1,200 interactive gaming attractions, and 28 food and beverage, retail, entertainment, and other staffed amenities and attractions.
3. Treasure Island employs approximately 2,500 individuals when fully operational.
4. Treasure Island is ordinarily open to the public twenty-four hours a day, seven days per week.
5. A letter accompanying the Policy signed by a Senior Vice President of AFM indicates that AFM and its parent, FM Global Group (hereinafter “FM”), were “partnering” to service the Policy.
6. Indoor air is not excluded from the “Property Insured.”
7. The claim procedures manual used by AFM at the time of Treasure Island’s claim contains a list of perils covered under the Policy.
8. The claim procedures manual used by AFM at the time of Treasure Island’s claim includes “Communicable Disease” among the list of perils covered under the policy.
9. “Communicable Disease” is among the perils that can cause damage to property.

³ The Parties reserve the right to amend and/or supplement the statement of Issues of Fact to Be Determined at Trial subject to the Court’s ruling on AFM’s Motion for Reconsideration (ECF No. 302) within a reasonable time after the Court issues its decision and order thereon.

- 1 10. The claim procedures manual used by AFM at the time of Treasure Island's claim
2 assigns claim peril code 60 to the peril of "Communicable Disease."
- 3 11. The peril code description for "Communicable Disease" in the claim procedures manual
4 is "[P]hysical loss or damage which results from the actual presence of communicable
5 disease and the associated business interruption as defined by the policy."
- 6 12. "Communicable disease" also includes the causative virus.
- 7 13. SARS-CoV-2, the virus that causes COVID-19, satisfies the Policy's definition of
8 "Communicable Disease."
- 9 14. A PowerPoint file prepared by FM before the COVID-19 pandemic contains a slide
10 that defines "Physical Damage" as "Actual Substantive Change" that "[r]educes
11 worth or usefulness. Prevents from being used as designed or intended."
- 12 15. The Policy also contains two coverage grants for communicable disease that apply
13 without proof of physical loss or damage.
- 14 16. Each coverage grant for communicable disease without proof of physical loss or
15 damage is sublimited to \$100,000.
- 16 17. The same trigger applies to both coverages (for communicable disease without proof
17 of physical loss or damage): communicable disease is actually present on-site, and
18 there is (a) an order by an authorized governmental agency regulating the same or (b)
19 a decision by an "Officer of the Insured" regarding the same.
- 20 18. When AFM added the communicable disease sublimited coverages to its form policy
21 form, it described them as "Additional Coverages," "Coverage Extensions,"
22 "expansion in coverage," and "enhancement to [AFM's] form that nicely rounds out
23 the overall package."
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1 19. Neither of the communicable diseases sublimited coverages in the Policy indicate
2 anywhere that they are “exceptions” or “exemptions.”

3 20. In examining the Policy, this Court has stated that: “[t]he contamination exclusion
4 and communicable disease provision appear to be contradictory.”

5 21. This Court has also determined that Treasure Island’s interpretation of the
6 contamination exclusion is reasonable because “it would be meaningless (and
7 impossible) to cover the physical removal of disease but exclude the virus that causes
8 it.”

9 22. Treasure Island’s reasonable interpretation of the Policy is that the Policy’s
10 contamination exclusions applies to non-human-to-human communicable disease
11 viruses.

12 23. This Court has also ruled that the “loss of market” or “loss of use” exclusions do not
13 apply to Treasure Island’s claim.

14 24. In May 2020, the U.S. Food and Drug Administration (“FDA”) authorized the first
15 antigen test for COVID-19, which is capable of identifying a current COVID-19
16 infection.

17 25. In June 2020, the FDA authorized the first polymerase chain reaction (“PCR”) test for
18 COVID-19, which is also capable of identifying a current COVID-19 infection.

19 26. In this case, the Court has recognized that prior to May/June 2020, there were no
20 authorized tests available in the United States capable of identifying a current
21 COVID-19 infection.

1 27. From January 1, 2020 to March 17, 2020 (hereinafter referred to as the “Pre-Closure
2 Period”), Treasure Island had more than 320,000 registered guests and hosted
3 approximately 7,000 visitors per day.

4 28. Employees with symptoms consistent COVID-19 were on-site prior to COVID-19
5 tests being publicly available in the United States.

6 29. For example, in mid-January 2020, Employee 77292, who worked in Human
7 Resources at Treasure Island, experienced loss of taste and smell, had difficulty
8 breathing, and experienced fatigue, body aches, nausea, and a dry cough.

9 30. Employee 77292’s symptoms lasted approximately two weeks.

10 31. During the time Employee 77292 had symptoms, he worked at Treasure Island,
11 including in the Human Resources office area, traveling throughout the property, and
12 interacting with other employees.

13 32. On May 28, 2020, Employee 77292 tested positive for antibodies to the SARS-CoV-
14 2, which indicates a prior COVID-19 infection.

15 33. Between experiencing his symptoms in January and this positive antibody test, he did
16 not experience any similar symptoms.

17 34. Also, in mid-February 2020, Employee 405358, who worked in Housekeeping at
18 Treasure Island, experienced loss of taste and smell, a high fever, sore throat, body
19 aches, very bad cough, congestion, nausea, extreme shortness of breath and had
20 difficulty breathing.

21 35. Employee 405358’s symptoms lasted approximately two weeks.

1 36. During the time Employee 405358 had symptoms, she worked at Treasure Island,
2 including in the back of the house areas, traveling throughout the property, and
3 interacting with other employees.

4 37. On May 28, 2020, Employee 405358 tested positive for antibodies to SARS-CoV-2,
5 which indicates a prior COVID-19 infection.

6 38. Between experiencing her symptoms in February and this positive antibody test, she
7 did not experience any similar symptoms.

8 39. Treasure Island's epidemiology expert, using generally accepted quantitative
9 scientific modeling, has opined "with 99.99% certainty" that at least 100 cases of
10 guests with COVID-19 entered Treasure Island during Pre-Closure Period.

11 40. AFM has not disclosed an epidemiologist (or other qualified expert) to provide a
12 counter-opinion concerning the number of guests with COVID-19 at Treasure Island
13 between January 1, 2020 and March 17, 2020.

14 41. Courtney Barnaby, Senior Vice President of Operations for Treasure Island, and other
15 senior staff discussed closing Treasure Island as early as the beginning of March
16 2020.

17 42. Treasure Island made the decision to close because of management's understanding at
18 the time that individuals with COVID-19 were on-site, and because of the physical
19 impact COVID-19 was having at Treasure Island.

20 43. After Treasure Island made the decision to close, on March 17, 2020, the Governor of
21 Nevada verbally ordered all gaming establishments to close as of that same day at
22 11:59 pm.

1 44. Prior to the Governor's order, Treasure Island was in the process of determining
2 logistics necessary to implement its own closure, which is very complicated for a
3 highly-regulated business like Treasure Island that had never closed before and which
4 was typically open twenty-four hours a day, seven days a week, and did not even have
5 locks on the main points of ingress and egress to the property.
6

7 45. On March 19, 2020, AFM received Treasure Island's notice of claim under the Policy
8 for COVID-19 business interruption submitted by its insurance broker.

9 46. By letter dated March 21, 2020, AFM responded to Treasure Island's notice and
10 classified the peril as "Communicable Disease."

11 47. AFM's Catastrophe Executive Loss Summary prepared by its adjuster for Treasure
12 Island's claim also identified the claim peril as "Communicable Disease."
13

14 48. AFM has denied Treasure Island's claim for coverage under the Policy COVID-19
15 business interruption claim.

16 49. While closed, Treasure Island prepared to implement a corrective action plan to
17 restore the property to a suitable operating condition, pursuant to which the negative
18 impact, alteration and change to insured property (indoor air) from COVID-19 would
19 be mitigated, isolated, and controlled.

20 50. During the Closure Period, Treasure Island's Business Interruption loss was
21 \$28,875,815.
22

23 51. Treasure Island reopened on June 4, 2020, and implemented the corrective action
24 plan.

25 52. The corrective action plan allowed Treasure Island to use its property and services to
26 the extent possible to reduce its Business Interruption loss.
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1 53. Although the corrective action plan enabled Treasure Island to operate, it restricted
2 and interfered with Treasure Island's operations in myriad ways, including by
3 drastically reducing occupancy, and was costly.

4 54. Treasure Island's epidemiology expert, using generally accepted quantitative
5 scientific modeling, has opined "with 99.99% certainty" that at least 400 cases of
6 guests with COVID-19 entered Treasure Island during the time period from June 4,
7 2020 through November 30, 2020 (hereinafter the "Opening Period").

8 55. AFM has not disclosed an epidemiologist (or other qualified expert) to provide a
9 counter-opinion concerning the number of guests with COVID-19 at Treasure Island
10 between June 4, 2020 and November 30, 2020.

11 56. Treasure Island's business interruption loss during the Opening Period was
12 \$35,018,442.
13

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15 **B. AFM**

- 16 1. Whether there was the actual not suspected presence of COVID-19 at Treasure Island
17 during the Policy term.
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- 19 2. Whether access to Treasure Island was limited, restricted, or prohibited by an order of
20 an authorized governmental agency regulating or as a result of the actual not suspected
21 presence of COVID-19 at Treasure Island during the Policy term.
- 22 3. Whether access to Treasure Island was limited, restricted, or prohibited by a decision
23 of an officer of Treasure Island as a result of the actual not suspected presence of
24 COVID-19 at Treasure Island during the Policy term.
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- 1 4. Whether Treasure Island incurred any reasonable and necessary costs for the cleanup,
2 removal, and disposal of the actual not suspected presence of COVID-19 at Treasure
3 Island during the Policy term.
- 4 5. The amount of any reasonable and necessary costs for the cleanup, removal, and
5 disposal of the actual not suspected presence of COVID-19 at Treasure Island during
6 the Policy term.
- 7 6. Whether Treasure Island incurred any business interruption loss caused by the actual
8 not suspected presence of COVID-19 at Treasure Island during the Policy term.
- 9 7. The amount of any business interruption loss sustained in one month caused by the
10 actual not suspected presence of COVID-19 at Treasure Island during the Policy term..
- 11 8. The number of discrete events of physical loss or damage during the Policy term caused
12 by the actual not suspected presence of COVID-19 occurring during the Policy term.
- 13 9. Whether Treasure Island suffered any business interruption and extra expense loss as a
14 result of physical loss or damage to its property during the Policy term caused by the
15 presence of COVID-19 or the virus that causes COVID-19.
- 16 10. The amount of any cost to repair or replace physical loss or damage to Treasure Island's
17 property occurring during the Policy term caused by each discrete event of the presence
18 of COVID-19 or the virus that causes COVID-19.
- 19 11. The time period starting from the time of physical loss or damage caused by the
20 presence of COVID-19 or the virus that causes COVID-19 occurring during the Policy
21 term and ending when, with due diligence and dispatch, the lost or damaged property
22 could be repaired or replaced and made ready for business operations under the same
23 or equivalent physical operating conditions that existed prior to the loss or damage.
- 24 25 26 27 28

12. The amount of any business interruption and extra expense loss Treasure Island's suffered as a result of physical loss or damage to Treasure Island's property during the Policy term caused by each discrete event of the presence of COVID-19 or the virus that causes COVID-19 during the time period starting from the time of physical loss or damage and ending when, with due diligence and dispatch, the lost or damaged property could be repaired or replaced and made ready for business operations under the same or equivalent physical operating conditions that existed prior to the loss or damage.

13. Whether any of Treasure Island's business interruption or extra expense loss was sustained during any idle period when operations would have taken place due to any reason other than physical loss or damage insured by the AFM policy.

14. Whether Treasure Island's claim based on alleged physical loss or damage from the presence of SARS-CoV-2 or COVID-19 is one for contamination, as excluded by the Policy.

15. Whether Treasure Island's claim based on alleged physical loss or damage from the presence of SARS-CoV-2 or COVID-19 is one for "loss of market or loss of use" as excluded by the Policy.

VI. ISSUES OF LAW TO BE TRIED AND DETERMINED AT TRIAL

A. The parties agree on the following issues of law to be tried and determined at trial.

1. Whether AFM breached the Policy.

a. Whether COVID-19/SARS-CoV-2 caused "physical loss or damage" at Treasure Island during the Policy term; and

- b. Whether the Extended Period of Liability (365 days) applies; or
 - c. Whether COVID-19/SARS-CoV-2 were present at Treasure Island during the Policy term without causing physical loss or damage, and access to Treasure Island was limited, restricted or prohibited by: (i) an order of an authorized governmental agency regulating such presence; or, (ii) a decision of an Officer of the Insured as a result of such presence.
2. Subject to affirmative response(s) above, whether Treasure Island experienced:
 - a. “Business Interruption loss” as a direct result of 1.a.
 - b. “Business Interruption loss” during the Extended Period of Liability (1.b.).
 - c. Recoverable damage from 1.c.

B. Treasure Island submits these additional issues of law to be tried and determined at trial.

1. Whether AFM failed to conduct a reasonable investigation of Treasure Island’s claim.
2. Whether Treasure Island experienced financial damage from AFM’s failure to conduct a reasonable investigation of Treasure Island’s claim.

C. AFM submits these additional issues of law to be tried and determined at trial.

1. Whether Treasure Island’s property suffered “physical loss or damage” during the Policy term caused by the presence of COVID-19 or SARS-CoV-2.
2. Whether the AFM policy’s Communicable Disease – Property Damage coverage applies.
3. Whether the Contamination Exclusion applies to preclude coverage.
4. Whether the Loss of Use exclusion applies to preclude coverage.

5. Whether the Idle Periods Exclusion applies to preclude coverage in whole or in part.
6. Whether the Extended Period of Liability coverage applies to Treasure Island's claim for expenses to reduce loss.
7. Whether each instance of someone having COVID-19 at Treasure Island is a separate "occurrence" as that term is defined in the AFM Policy.

VII. EXHIBITS

- a. The following exhibits are stipulated into evidence in this case and may be so marked by the clerk:

None at this time. Stipulations on exhibits are pending the outcome of the Parties' motions in limine.

- b. As to the following additional exhibits, the parties have reached the stipulations stated:

- i. Stipulations on Plaintiff's exhibits.

None at this time.

- ii. Stipulations on Defendant's exhibits.

None at this time.

- c. As to the following exhibits, the party against whom the same will be offered objects to their admission on the grounds stated:

1. Plaintiff's exhibits and objections to them.⁴

⁴ The Parties reserve the right to supplement and/or change their exhibit lists subject to the outcome of the Motions to Reconsider within a reasonable time thereafter.

#	Document	Bates No.	Objection by Defendant
1.	Treasure Island's Supplemental Responses to Interrogatories, including FRE 1006 summary in Table 1 (C. Barnaby Depo Ex. 201)		Hearsay
2.	AFM Explanatory Memorandum (SJ1 App. 459-466)		Relevance
3.	AFM Pro AR 4100: All Risk Coverage Policy Form (SJ1 App. 467-516)		Relevance
4.	"Germ Warfare" Article in FM Global REASON publication, 2016 (SJ1 App. 517-519)		Relevance
5.	A/FM slide deck*		Relevance
6.	Nancy Strout email regarding claim manual (ECF 122)		Hearsay; Relevance; FRE 403
7.	AFM's Amended Responses to Requests for Production of Documents, dated 10/14/20		Relevance
8.	B. Cook Affidavit in Opposition to Motion to Compel, dated 11/11/20 (B. Cook Depo Ex. 7)		Relevance
9.	Retail Brands (M. Newton Depo Ex. 7)		Hearsay; Relevance; FRE 403
10.	B. Cook Affidavit in Retail Brands (M. Newton Depo Ex. 6)		Relevance; FRE 403
11.	Policy in Retail Brands (Newton Ex. 8)		Relevance; FRE 403
12.	FM's Motion in Limine in Federal Insurance (M. Roberts Ex. 11)		Hearsay; Relevance; FRE 403
13.	AFM Forms filed with New York (B. Bueche Depo Ex. 4)		Relevance
14.	AFM Healthcare Form (B. Bueche Depo Ex. 5)		Relevance
15.	Attendance (M. Roberts Depo Ex. 17)		Relevance
16.	Declaration of Baker regarding Talking Points dated 5/27/21 (ECF 162)		Relevance
17.	Talking Points (B. Cook Depo Ex.4)		Relevance
18.	5/28/20 Docket Entry filing the complaint		Relevance
19.	Cho list		Hearsay

#	Document	Bates No.	Objection by Defendant
	(K. Cho 30(b)(6) Depo Ex. 220)		
20.	DeLeon list (D. DeLeon 30(b)(6) Depo Ex. 218)		Hearsay
21.	Porter list (M. Porter 30(b)(6) Depo Ex. 221)		Hearsay; Relevance
22.	Taylor list (C. Taylor 30(b)(6) Depo Ex. 219)		Hearsay; Relevance
23.	Unfair Claims Settlement Practices Act (B. Cook Depo Ex. 9)		Relevance; FRE 403
24.	Unfair Property/Casualty Claims Settlement Practices Model Regulation (B. Cook Depo Ex. 10)		Relevance; FRE 403
25.	AFM's internal processing re TI claim	AFM000053	
26.	Kaercher Notice of Loss (B. Anthony Ex. 269)	AFM000064	
27.	Property Loss Notice	AFM000064	
28.	3/20/20 Kaercher email re TI claim	AFM000134	
29.	Casillas internal processing 3/19/20 email	AFM000139	
30.	Casillas 3/21/20 communication acknowledging receipt of claim (1)	AFM000145	
31.	Casillas 3/21/20 communication acknowledging receipt of claim (2)	AFM000146	
32.	Treasure Island Policy - General Change Endorsement B. Cook Depo Ex. 11	AFM000155	Relevance
33.	Catastrophe Executive Loss Summary	AFM000157	
34.	4/13/20 Kaercher follow up regarding claim	AFM000235	
35.	Kaercher Notice of Loss (B. Anthony Ex. 270)	AFM000239	
36.	Carroll 4/9/20 Denial (B. Anthony Ex. 272)	AFM000240	
37.	Kaercher follow up communication (B. Anthony Depo Ex. 271)	AFM000246	
38.	Carrol 4/16/20 response (B. Anthony Ex. 273)	AFM000403	
39.	Treasure Island's 5/7/20 response (B. Anthony Ex. 274)	AFM000418	
40.	5/14 office closed communications	AFM000420	Relevance
41.	6/19/20 AFM's letter to Treasure Island re claim	AFM000424	
42.	6/8/20 email to Carroll from Casillas re letter to TI re claim, with comments and changes	AFM000432	Relevance

#	Document	Bates No.	Objection by Defendant
43.	3/26/20 Internal loss memo email	AFM002285	
44.	3/23/20 internal rejection tracking	AFM002289	Relevance
45.	3/24/20 internal rejection tracking	AFM002290	Relevance
46.	4/13/20 Casillas and Carroll meeting	AFM002296	
47.	6/8/20 email from Casillas re TI claim	AFM002307	
48.	Catastrophe Executive Loss Summary	AFM002442	
49.	4/14/20 did they renew emails (8)	AFM002444	Relevance; FRE 403
50.	6/19/20 response to TI with proof of loss	AFM002453	
51.	3/26/20 internal reinsurance	AFM002479	Relevance; FRE 403
52.	Email regarding AFM draft TI letter dated 3/21/20	AFM002487	
53.	Catastrophe Executive Loss Summary	AFM002678	
54.	FM Global's Claims Procedures (D. Carroll Depo Ex. 5)	AFM003044	Relevance; FRE 403
55.	4/15/20 internal communications	AFM003095	
56.	5/14 office closed communications (2)	AFM003111	Relevance
57.	4/14/20 did they renew emails (1)	AFM003123	Relevance; FRE 403
58.	4/14/20 did they renew emails (2)	AFM003124	Relevance; FRE 403
59.	4/14/20 did they renew emails (3)	AFM003125	Relevance; FRE 403
60.	4/14/20 did they renew emails (4)	AFM003126	Relevance; FRE 403
61.	4/14/20 did they renew emails (5)	AFM003127	Relevance; FRE 403
62.	4/14/20 did they renew emails (6)	AFM003128	Relevance; FRE 403
63.	4/14/20 did they renew emails (7)	AFM003135	Relevance; FRE 403
64.	AFM's Capacity Requirement (B. Bueche Depo Ex. 3)	AFM003479	Relevance; FRE 403
65.	1/31/20 Talking Points (B. Cook Depo Ex. 6)	AFM003514	Relevance
66.	February 6, 2020 revised Talking Points (B. Cook Depo Ex. 8)	AFM003517	Relevance
67.	FM Global Catastrophe Handling Plan (B. Cook Depo Ex. 12)	AFM003540	Relevance
68.	FM Global's Claim Procedure Manual (P. Evans Depo Ex. 6)	AFM003718	Relevance; FRE 403

#	Document	Bates No.	Objection by Defendant
69.	4/14/20 did they renew emails (10)	AFM003854	Bates number does not match document description. All objections reserved.
70.	Catastrophe Executive Loss Summary	AFM003856	
71.	Catastrophe Executive Loss Summary	AFM003858	
72.	Carroll 4/23/20 internal communication regarding follow up	AFM003879	
73.	4/14/20 did they renew emails (9)	AFM003895	Relevance; FRE 403
74.	Casillas internal processing 3/19/20 email	AFM003898	
75.	Carroll 3/23/20 internal rejection	AFM003905	Relevance
76.	Wing E-mail*	FMGLOBAL_C_00030210	Relevance; FRE 403
77.	Articles (C. Barnaby Depo Ex. 210)	TI_000001	Hearsay; Relevance
78.	Articles (C. Barnaby Depo Ex. 213)	TI_000003	Hearsay; Relevance
79.	Attendance Records (T. Cummins Depo Ex. 225)	TI_000032	Relevance
80.	Attendance Records (T. Cummins Depo Ex. 226)	TI_000103	Relevance
81.	Antibody Test Results (T. Cummins Depo Ex. 233)	TI_000185	Hearsay; Relevance
82.	AFM cover letter and Treasure Island policy (D. Carroll Depo Ex. 4)	TI_001078	
83.	Article (C. Barnaby Depo Ex. 211)	TI_001275	Hearsay; Relevance
84.	Article (C. Barnaby Depo Ex. 212)	TI_001289	Hearsay; Relevance
85.	Article (C. Barnaby Depo Ex. 214)	TI_001294	Hearsay; Relevance
86.	J. Griffis deposition Ex. 257	TI_001333	
87.	Article (C. Barnaby Depo Ex. 216)	TI_001350	Hearsay; Relevance
88.	Article (C. Barnaby Depo Ex. 215)	TI_001356	Hearsay; Relevance
89.	Site plans (SJ1 App. 431-446)	TI_001443	
90.	Property information	TI_001456	

#	Document	Bates No.	Objection by Defendant
91.	Angela Rasmussen Report (Ex. 286)	TI_001460	Hearsay
92.	J. Lewnard Report	TI_001486	Hearsay
93.	J. Lewnard CV	TI_001498-001506	FRE 401, 402, 403, 801, 802
94.	Alex LeBeau Report (A. LeBeau Depo Ex. 296)	TI_001507	Hearsay
95.	A. LeBeau CV	TI_001520 – TI_001525	FRE 401, 402, 403, 801, 802
96.	Timothy Yessman Report	TI_001531	Hearsay; Relevance
97.	T. Yessman CV	TI_001536-TI_001539	FRE 401, 402, 403, 801, 802
98.	2020 Budget	TI_001573	
99.	J. Griffis deposition Ex. 252	TI_001584	
100.	Brian Twellman Report (B. Twellman Ex. 276)	TI_001597	Hearsay
101.	B. Twellman CV	TI_001607-TI_001613	FRE 401, 402, 403, 801, 802
102.	Documents relied on by Twellman listed in Report	TI_001669	Hearsay; Relevance
103.	Corrective Action plan (Cummins Depo Ex. 229)	TI_002059	
104.	Antibody Test Results (T. Cummins Depo Ex. 232)	TI_002612	Hearsay; Relevance
105.	Antibody Test Results (T. Cummins Depo Ex. 231)	TI_002624	Hearsay; Relevance
106.	Testing Results (T. Cummins Depo Ex. 242)	TI_003108	Hearsay; Relevance
107.	Testing Results (T. Cummins Depo Ex. 243)	TI_003250	Hearsay; Relevance
108.	Incident Report (C. Barnaby Depo Ex. 203)	TI_003368	Hearsay; Relevance
109.	Incident Report (C. Barnaby Depo Ex. 205)	TI_003373	Hearsay; Relevance
110.	Incident Report (C. Barnaby Depo Ex. 204)	TI_003382	Hearsay; Relevance
111.	Angela Rasmussen Rebuttal/Supplement (Rasmussen Depo Ex. 287)	TI_003387	Hearsay

#	Document	Bates No.	Objection by Defendant
112.	A. Rasmussen CV	TI_003392 – TI_003402	FRE 401, 402, 403, 801, 802
113.	T. Yessman Reply	TI_003409	Hearsay; Relevance
114.	Attendance (T. Cummins Ex. Depo 227)	TI_003414	Relevance
115.	Attendance (T. Cummins Depo Ex. 245)	TI_003414	Relevance
116.	Attendance (M. Roberts Depo Ex. 16)	TI_003416	Relevance
117.	Attendance (T. Cummins Depo Ex. 244)	TI_003416	Relevance
118.	DOL Report (T. Cummins Depo Ex. 224)	TI_003735	Hearsay; Relevance
119.	Room response (C. Barnaby Depo Ex. 206)	TI_003789	Relevance
120.	J. Griffis deposition Ex. 259	TI_003970	
121.	J. Griffis deposition Ex. 260	TI_003971	
122.	J. Griffis deposition Ex. 258	TI_003972	
123.	J. Griffis deposition Ex. 246	TI_004009	
124.	J. Griffis deposition Ex. 249	TI_004014	
125.	J. Griffis deposition Ex. 248	TI_004015	
126.	J. Griffis deposition Ex. 247	TI_004017	
127.	Kevin Cahill Report dated 1/22/21 (B. Twellman Depo Ex. 282)	TI_004087	Hearsay
128.	K. Cahill CV	TI_004107-TI_004124	FRE 401, 402, 403, 801, 802
129.	J. Lewnard Supplement	TI_004126	Hearsay
130.	B. Twellman Ex. 253	TI_004136	
131.	J. Griffis deposition Ex. 253	TI_004136	Duplicative
132.	B. Twellman Ex. 254	TI_004137	
133.	J. Griffis deposition Ex. 254	TI_004137	Duplicative
134.	B. Twellman Ex. 255	TI_004138	
135.	J. Griffis deposition Ex. 255	TI_004138	Duplicative
136.	J. Griffis deposition Ex. 256	TI_004139	
137.	Twellman Supplement Report (B. Twellman Ex. 277)	TI_004140	Hearsay
138.	Documents relied on by B. Twellman (Supplemental Report)	TI_004219	Relevance; Hearsay
139.	Demonstrative Exhibits as later identified		Objections Reserved

*These documents were produced by FM in another matter (Cinemark v. FM), and were not designated by FM as confidential. However, there are approximately 12 other documents that are relevant to this matter (TI v. AFM), but have been designated confidential by FM. Consistent with Judge Youchah's Sanctions Order dated 9/26/23, counsel for Treasure Island is seeking an agreement with counsel for A/FM to use those documents in this case. Counsel for Treasure Island raised this particular issue at a meet and confer on 4/15/24 (approximately 2 weeks after this Court partially denied AFM's Motion for Summary Judgment). In the event the Parties are unable to agree, Treasure Island will bring this before the Court in due course.

Plaintiff reserves the right to use any exhibit offered, listed, or disclosed by Defendant.

Plaintiff also reserves the right to utilize impeachment documents not listed herein.

Defendant reserves the right to object to the admissibility of any exhibit being offered by Plaintiff on the basis of foundation, authenticity, hearsay, relevance, more prejudicial than probative and admissibility. Defendant also reserves the right to object to any exhibit being offered by Plaintiff which has been improperly or untimely disclosed, or not previously produced during the normal course of discovery proceedings as mandated by FRCP 26. Defendant further reserves any and all other remaining evidentiary objections for trial.

2. Defendant's exhibits and objections to them.

#	Document	Bates No.	Objection by Plaintiff
200	AFM Policy No. GS784 issued March 20, 2019 (DEX 002 – Beuche)	TI_001078- TI_001140	
201	Letter from David Carroll (AFM) to Brad Anthony (TI) dated April 9, 2020 (DEX 004-Yessman)	TI_000008- TI_000010	
202	Treasure Island's Supplemental Responses to AFM's First Set of Interrogatories	n/a	
203	Letter to Nevada Gaming Control Board from Treasure Island re re-opening Guidelines (DEX 229 – Cummins)	TI_002059- TI_002096	

#	Document	Bates No.	Objection by Plaintiff
204	Acord Property Loss Notice (DEX 269 – Anthony)	AFM000064- AFM000066	
205	Email thread dated March 19, 2020 from Allen Kaercher (Kaercher Ins.) to Marika Block (AFM) and William Kropp (AFM) re: TI claim (DEX 270 – Anthony)	AFM000239	
206	Email thread from David Carroll (AFM) to Jason Wing (AFM) re: letter and response (DEX 271 – Anthony)	AFM000246- AFM000250	
207	Letter dated April 9, 2020 from David Carroll (AFM) to Brad Anthony (TI) re: coverage position (DEX 272 – Anthony)	AFM000240- AFM000242	
208	Letter dated April 16, 2020 from David Carroll (AFM) to Brad Anthony (TI) re: coverage position and Civil Authority provisions (DEX 273 – Anthony)	AFM000403- AFM000405	
209	Smith College article titled, “Getting to the Heart of COVID-19” by Cheryl Dellecese (DEX 289 – Rasmussen)	n/a	FRE 401, 402, 403, 602, 901, 902.
210	Article titled, "A Virologist Explains Why COVID-19 Coronavirus Isn't Really Dangerously Lingering on Surfaces for Weeks," by Angela Rasmussen (DEX 290 – Rasmussen)	n/a	FRE 401, 402, 403, 602, 901, 902.
211	CDC Science Brief: "SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments," updated April 5, 2021 (DEX 292 – Rasmussen)	n/a	FRE 401, 402, 403, 602, 901, 902.
212	CDC article updated April 5, 2021 titled "Cleaning and Disinfecting Your Facility," (DEX 293 – Rasmussen)	n/a	FRE 401, 402, 403, 602, 901, 902.
213	Email thread dated March 19, 2020 from Marika Block (AFM) to Allen Kaercher (Kaercher Ins.), et al. re: claim	AFM000053- AFM000055	
214	Email thread dated March 20, 2020 from Allen Kaercher (Kaercher Ins.) to Jeffrey Casillas (AFM), et al. re: Corona Virus closure – civil authority	AFM000062- AFM000063	FRE 401, 402, 403, 602, 901, 902.

#	Document	Bates No.	Objection by Plaintiff
215	Letter dated March 21, 2020 from Jeffrey Casillas (AFM) to Brad Anthony (TI) acknowledging receipt of notification of claim	AFM000146- AFM000149	
216	Email thread dated April 13, 2020 from Robin Rider (Kaercher Ins.) to Jeffrey Casillas (AFM), et al. re: denial of coverage, etc.	AFM000235- AFM000238	
217	Letter dated June 19, 2020 from David Carroll (AFM) to Brad Anthony (TI) re: claim coverage, etc.	AFM000424- AFM000429	
218	Email thread dated June 19, 2020 from David Carroll (AFM) to Brad Anthony (TI), et al. re: Sworn Statement in Proof of Loss.	AFM002453	
219	AFM's Sworn Statement in Proof of Loss (blank)	AFM002454- AFM002455	FRE 401, 402, 403, 901, 902.
220	Email thread dated March 19, 2020 from Allen Kaercher (Kaercher Ins.) to Marika Block (AFM), et al re: civil authority, etc.	TI_000006- TI_000007	FRE 401, 402, 403.
221	FEMA Covid-19 Emergency Declaration dated March 13, 2020.	TI_000196- TI_000197	FRE 401, 402, 403.
222	Health and Safety Policies for Resumption of Gaming Operations Nonrestricted Licensees dated October 1, 2020	TI_000235- TI_000247	FRE 401, 402, 403.
223	Nevada Gaming Control Board, Notice to Licensees dated April 2, 2020	TI_000249 – TI_000250	FRE 401, 402, 403.
224	Nevada Gaming Control Board, Notice to Licensees dated April 2, 2020	TI_000252	FRE 401, 402, 403.
225	Nevada Health Response, Nevada United Roadmap to Recovery dated April 30, 2020	TI_000281	FRE 401, 402, 403.
226	State of Nevada, Executive Department, Declaration of Emergency Directive 016 dated April 29, 2020	TI_000487 – TI_000490	FRE 401, 402, 403.
227	State of Nevada, Executive Department, Declaration of Emergency Directive 002 dated March 18, 2020	TI_000637 – TI_000638	FRE 401, 402, 403.

#	Document	Bates No.	Objection by Plaintiff
228	State of Nevada, Executive Department, Declaration of Emergency Directive 010 Stay at Home Order dated March 31, 2020	TI_000785 – TI_000787	FRE 401, 402, 403.
229	State of Nevada, Executive Department, Declaration of Emergency Directive 021 – Phase Two Reopening Plan dated May 28, 2020	TI_000937 – TI_000946	FRE 401, 402, 403.
230	Notice of Loss – Policy No. KTK-CMB-6P92851-7-20 to The Travelers Indemnity Co. Re: Treasure Island, LLC, Circus Circus LV, LP	TI_001143 – TI_001144	FRE 401, 402, 403.
231	Letter from William Englehardt, The Travelers Indemnity Co. to Kevin Small (Hunton, Andres & Kurth LLP) dated June 2, 2020	TI_001145 – TI_001155	FRE 401, 402, 403.
232	Treasure Island letter to Terry Johnson, Esq., (Nevada Gaming Control Board) dated May 14, 2020 – Re-Opening Guidelines	TI_001391 – TI_001428	FRE 401, 402, 403.
233	Email from Ray Suppe (VP of Customer Safety, LV Convention and Visitors Authority) providing Covid-19 Information from DHS dated May 1, 2020.	TI_001941 TI_001945	FRE 401, 402, 403.
234	CDC Article titled “How Covid-19 Spreads” dated August 11, 2022.	AFM0163 – AFM0164	FRE 401, 402, 403, 701, 901, 902.
235	CDC Article titled “Cleaning and Disinfecting Your Facility” dated April 5, 2021.	AFM0165 – AFM0170	FRE 401, 402, 403, 701, 901, 902.
236	CDC Article titled “When and How to Clean and Disinfect a Facility” dated November 2, 2022.	AFM0171 – AFM0173	FRE 401, 402, 403, 701, 901, 902.
237	Treasure Island Hotel & Casino facebook post dated March 17, 2020 re: closure	n/a	FRE 401, 402, 403, 701, 801, 802, 901, 902, FRCP 37(c)(1).
238	Treasure Island “X” post dated March 18, 2020 re: closing of gaming operations and hotel operations	n/a	FRE 401, 402, 403, 701, 801, 802, 901, 902, FRCP 37(c)(1).

#	Document	Bates No.	Objection by Plaintiff
239	Forbes Article titled “Donald Trump’s Best Friend, Billionaire Casino Mogul Phil Ruffin, Sees a Hidden Jackpot In The Pandemic” dated April 30, 2020	n/a	FRE 401, 402, 403, 701, 801, 802, 901, 902, FRCP 37(c)(1).
240	Article titled “How did the recent GDP revisions change the picture of the 2007-2009 recession and the recovery”?	CAHILL-TI_000001 – CAHILL-TI_000004	FRE 401, 402, 403.
241	GDP News Release dated December 22, 2020	CAHILL-TI_000005 – CAHILL-TI_000011	FRE 401, 402, 403.
242	Article titled “By the seat of our pants” dated June 7, 2020	CAHILL-TI_000012 – CAHILL-TI_000023	FRE 401, 402, 403, 602, 801, 802.
243	Email from Jerry Griffis (TI) to Christopher Cunio (Hunton), et al dated Jan. 20, 2021	CAHILL-TI_000024	
244	Treasure Island Operating Statement for years 2016 - 2020	CAHILL-TI_000025	
245	Principles of Microeconomics	CAHILL-TI_000026 – CAHILL-TI_000027	FRE 401, 402, 403.
246	LVCVA Tourism Tracker, Indicator Report	CAHILL-TI_000028	
247	FEMA Covid-19 Emergency Declaration dated March 13, 2020	TI_000196 – TI_000197	FRE 401, 402, 403.
248	Nevada Gaming Control Board – Notice to Licensees dated May 27, 2020	TI_000204 – TI_000205	FRE 401, 402, 403.
249	Nevada Gaming Control Board – Notice to Licensees dated August 14, 2020	TI_000206 – TI_000207	FRE 401, 402, 403.

#	Document	Bates No.	Objection by Plaintiff
250	Health and Safety Policies for Resumption of Gaming Operations – Restricted Licensees	TI_000208 – TI_000212	FRE 401, 402, 403.
251	Nevada Gaming Control Board – Policy Memorandum dated April 21, 2020	TI_000214 – TI_000219	FRE 401, 402, 403.
252	Nevada Gaming Control Board, Addendum to April 21, 2020 Policy Memorandum	TI_000221 – TI_000223	FRE 401, 402, 403.
253	Nevada Gaming Control Board, Addendum 2 to April 21, 2020 Policy Memorandum	TI_000224 – TI_000225	FRE 401, 402, 403.
254	Nevada Gaming Control Board – Notice to Licensees dated March 16, 2020	TI_000226	FRE 401, 402, 403.
255	Nevada Gaming Control Board, Policy Memorandum dated March 17, 2020	TI_000228 – TI_000234	FRE 401, 402, 403.
256	Nevada Gaming Control Board, Notice to Licensees dated May 1, 2020	TI_000248	FRE 401, 402, 403.
257	Nevada Gaming Control Board, Notice to Licensees dated April 2, 2020	TI_000249 – TI_000250	FRE 401, 402, 403.
258	Nevada Gaming Control Board, Notice to Licensees dated March 17, 2020	TI_000252	FRE 401, 402, 403.
259	Nevada Gaming Control Board, Notice to Licensees dated March 13, 2020	TI_000253	FRE 401, 402, 403.
260	Nevada Health Response: Guidance on Directive 027: Elevated Disease Transmission Criteria dated July 10, 2020	TI_000258 – TI_000260	FRE 401, 402, 403.
261	Nevada Health Response, Roadmap to Recovery for Nevada	TI_000261	FRE 401, 402, 403.
262	Nevada Health Response, Roadmap to Recovery for Nevada	TI_000364	FRE 401, 402, 403.
263	Nevada Guidance for Safe Gatherings dated September 29, 2020	TI_000365 – TI_000387	FRE 401, 402, 403.
264	Nevada Health Response, Nevada Medical Advisory Team: Guidance on Improvised Facial Coverings dated April 3, 2020	TI_000388 – TI_000390	FRE 401, 402, 403.
265	Nevada Health Response, Covid-19 Re-Opening Response Plan	TI_000391 – TI_000399	FRE 401, 402, 403.

#	Document	Bates No.	Objection by Plaintiff
266	Nevada Health Response Covid-19 Risk Mitigation Initiative dated March 17, 2020	TI_000400 – TI_000404	FRE 401, 402, 403.
267	Steve Sisolak, Governor of Nevada – Roadmap to Recovery for Nevada: Phase 2	TI_000405 – TI_000418	FRE 401, 402, 403.
268	Executive Department, Covid-19 Declaration of Emergency Directive dated March 15, 2020	TI_000431 – TI_000432	FRE 401, 402, 403.
269	Dept. of Public Safety, State of Emergency	TI_000434 – TI_000444	FRE 401, 402, 403.
270	Nevada Health Response, Gov. Sisolak Guidance: Directive 003 – Essential Businesses (updated April 16, 2020)	TI_000445 – TI_000464	FRE 401, 402, 403.
271	Executive Department, State of California – Proclamation of a State of Emergency dated March 4, 2020	TI_000497 – TI_000501	FRE 401, 402, 403.
272	Covid-19 Re-Opening Response Plan	TI_000577 – TI_000585	FRE 401, 402, 403.
273	Executive Department, Declaration of Emergency for Covid-19 dated March 12, 2020	TI_000616 – TI_000618	FRE 401, 402, 403.
274	Executive Department, Declaration of Emergency Directive 002 dated March 18, 2020	TI_000637 – TI_000638	FRE 401, 402, 403.
275	Steve Sisolak, Governor of Nevada, Roadmap to Recovery for Nevada	TI_000650 – TI_000659	FRE 401, 402, 403.
276	Dept. of Business and Industry Division of Insurance, Statement of Emergency	TI_000671 – TI_000678	FRE 401, 402, 403.
277	Executive Department, Declaration of Emergency Directive 008 dated March 29, 2020	TI_000706 – TI_000709	FRE 401, 402, 403.
278	Executive Department, Declaration of Emergency for Covid-19 – Directive 003 dated March 20, 2020	TI_000710 – TI_000713	FRE 401, 402, 403.
279	Steve Sisolak, Governor of Nevada – Roadmap to Recovery for Nevada: Phase 2	TI_000714 – TI_000727	FRE 401, 402, 403.
280	Nevada Health Response, Governor Steve Sisolak announces expansion of social distancing emergency directives dated April 8, 2020	TI_000754 – TI_000758	FRE 401, 402, 403.

#	Document	Bates No.	Objection by Plaintiff
281	Nevada Health Response, Governor Sisolak Announces COVID-19 Risk Mitigation Initiatives dated March 17, 2020	TI_000765 – TI_000772	FRE 401, 402, 403.
282	Executive Department, Declaration of Emergency Directive 010 Stay at Home Order dated March 31, 2020	TI_000785 – TI_000787	FRE 401, 402, 403.
283	Executive Department, Declaration of Emergency Directive 006 dated March 22, 2020	TI_000789 – TI_000791	FRE 401, 402, 403.
284	Nevada Health Response, Road to Recovery: Moving to a New Normal dated August 3, 2020	TI_000809 – TI_000818 -	FRE 401, 402, 403.
285	Executive Department, Declaration of Emergency Directive 007 dated March 24, 2020	TI_000830 – TI_000832	FRE 401, 402, 403.
286	Nevada Health Response Covid-19 Risk Mitigation Initiative dated March 17, 2020	TI_000837 – TI_000841	FRE 401, 402, 403.
287	Nevada Health Response, Gov. Sisolak Guidance: Directive 007 – Gatherings dated March 24, 2020	TI_000852 – TI_000853	FRE 401, 402, 403.
288	Executive Department, Declaration of Emergency Directive 009 (Revised) dated April 1, 2020	TI_000856 – TI_000858	FRE 401, 402, 403.
289	Nevada Health Response: Guidance on Directive 027: Elevated Disease Transmission Criteria dated July 10, 2020	TI_000914 – TI_000916	FRE 401, 402, 403.
290	Nevada Health Response, Gov. Sisolak Guidance: Directive 013 dated April 8, 2020	TI_000930 – TI_000931	FRE 401, 402, 403.
291	Steve Sisolak, Governor of Nevada – Roadmap to Recovery for Nevada	TI_000947 - TI_000956	FRE 401, 402, 403.
292	Nevada Health Response, Roadmap to Recovery for Nevada	TI_000957 – TI_000975	FRE 401, 402, 403.
293	Emergency Regulation to Protect Nevadans from Increased Medical and Prescription Costs Related to Covid-19	TI_001036 – TI_001037	FRE 401, 402, 403.
294	Executive Department, Declaration of Emergency Directive 013 dated April 8, 2020	TI_001038 – TI_001041	FRE 401, 402, 403.
295	Nevada Health Response, Gov. Sisolak Guidance: Directive 016 dated April 29, 2020	TI_001048 – TI_001051	FRE 401, 402, 403.

#	Document	Bates No.	Objection by Plaintiff
296	Nevada Health Response, Governor Sisolak announces Stay at Home directive, extends closure date to the end of April dated April 1, 2020	TI_001052 – TI_001053	FRE 401, 402, 403.
297	Office of Governor Steve Sisolak, Memorandum dated March 22, 2020	TI_001054	FRE 401, 402, 403.
298	Donald J. Trump, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (Covid-19) Outbreak, dated March 13, 2020	TI_001056 – TI_001057	FRE 401, 402, 403.
299	Treasure Island Annual Budget – Pre-Covid, 2020	TI_001330 – TI_001331	FRE 401, 402, 403.
300	Treasure Island Monthly Actuals v. Pre-Covid Annual Budget, YTD June 2020	TI_001332	FRE 401, 402, 403.
301	Treasure Island Monthly Actuals vs. Pre-Covid Annual Budget, 2019 - 2020	TI_001333	
302	Treasure Island Company Income Statement dated September 14, 2020	TI_001541	FRE 401, 402, 403.
303	Treasure Island Company Income Statement dated February 13, 2019	TI_001542	FRE 401, 402, 403.
304	Treasure Island Company Income Statement dated December 16, 2019	TI_001543	FRE 401, 402, 403.
305	Treasure Island Company Income Statement dated November 12, 2019	TI_001544	FRE 401, 402, 403.
306	Treasure Island Company Income Statement dated June 12, 2019	TI_001545	FRE 401, 402, 403.
307	Treasure Island Company Income Statement dated October 10, 2019	TI_001546	FRE 401, 402, 403.
308	Treasure Island Company Income Statement dated July 15, 2020	TI_001547	FRE 401, 402, 403.
309	Treasure Island Company Income Statement dated March 12, 2020	TI_001548	FRE 401, 402, 403.
310	Treasure Island Company Income Statement dated September 11, 2019	TI_001549	FRE 401, 402, 403.

#	Document	Bates No.	Objection by Plaintiff
311	Treasure Island Company Income Statement dated February 13, 2020	TI_001550	FRE 401, 402, 403.
312	Treasure Island Company Income Statement dated March 14, 2019	TI_001551	FRE 401, 402, 403.
313	Treasure Island Company Income Statement dated August 13, 2020	TI_001552	FRE 401, 402, 403.
314	Treasure Island Company Income Statement dated May 21, 2020	TI_001553	FRE 401, 402, 403.
315	Treasure Island Company Income Statement dated June 11, 2020	TI_001554	FRE 401, 402, 403.
316	Treasure Island Company Income Statement dated April 15, 2020	TI_001555	FRE 401, 402, 403.
317	Treasure Island Company Income Statement dated April 12, 2019, 2019	TI_001556	FRE 401, 402, 403.
318	Treasure Island Company Income Statement dated May 13, 2019	TI_001557	FRE 401, 402, 403.
319	Treasure Island Company Income Statement dated January 17, 2020	TI_001558	FRE 401, 402, 403.
320	Treasure Island 2020 Budget	TI_001573	
321	Treasure Island Departmental Income Statement, Other Operating Division, 2018 – 2020	TI_001574	FRE 401, 402, 403.
322	Treasure Island Departmental Income Statement, Hotel Division, 2018 – 2020	TI_001577	FRE 401, 402, 403.
323	Treasure Island Departmental Income Statement, Entertainment Division, 2018 – 2020	TI_001579	FRE 401, 402, 403.
324	Treasure Island Departmental Income Statement, General and Administrative Division, 2018 – 2020	TI_001581	FRE 401, 402, 403.
325	Treasure Island Departmental Income Statement, Casino Division, 2018 – 2020	TI_001582	FRE 401, 402, 403.
326	Treasure Island Departmental Income Statement, Food and Beverage Division, 2018 – 2020	TI_001583	FRE 401, 402, 403.

#	Document	Bates No.	Objection by Plaintiff
327	Treasure Island Covid-19 Related Expenses, Business Interruption, For the year ended December 31, 2020	TI_001584	
328	Treasure Island Company Income Statement dated November 11, 2020	TI_003970	
329	Treasure Island Company Income Statement dated December 11, 2020	TI_003971	
330	Treasure Island Company Income Statement dated October 13, 2020	TI_003972	
331	Radisson License Agreement between Radisson Hotels International, Inc. and Treasure Island, LLC dated July 12, 2019	TI_003973 – TI_004008	FRE 401, 402, 403.
332	Treasure Island Radisson Invoices Charges, 2020	TI_004009	
333	Treasure Island Radisson Invoice Charges, 2020	TI_004010 – TI_004013	FRE 401, 402, 403.
334	Treasure Island Health Benefits Paid by the Employer, Furloughed Employees, June 30 - Nov. 30	TI_004014	
335	Treasure Island, Interdepartment Allocations, 2019 – 2020	TI_004015	
336	Treasure Island Lease Schedule of Expected vs. Actual Rent, January 2019 – December 2019	TI_004016	FRE 401, 402, 403.
337	Treasure Island Lease Schedule of Expected vs. Actual Rent, January 2020 – December 2020	TI_004017	
338	Treasure Island Covid-19 Related Expenses, Business Interruption for the year ended December 31, 2020	TI_004136	
339	Treasure Island PO's Direct to Outlets, March – September 2020	TI_004137	
340	Treasure Island PO's Requisitioned from the Warehouse, March – December 2020	TI_004038	FRE 401, 402, 403.
341	Treasure Island Cares Act – Retention Credit for the Three Months Ending June 30, 2020	TI_004039	FRE 401, 402, 403.
342	Mark Roberts CV	Appendix B to Roberts Dep. Exhibit 5	FRE 401, 402, 403, 801, 802.

#	Document	Bates No.	Objection by Plaintiff
343	Mark Newton CV	Exhibit 1 to Newton Dep. Exhibit 1	FRE 401, 402, 403, 801, 802.
344	Schedules supporting Business Income Loss calculations	Exhibit 1 to Newton Dep. Exhibit 3	FRE 401, 402, 403, 801, 802.
	Demonstrative Exhibits as later identified		Objections Reserved

Defendant reserves the right to use any exhibit offered by Plaintiff. Defendant further anticipates use of demonstrative exhibits during trial to be exchanged at a date mutually-agreed upon by the parties or as further ordered by the Court. **Defendant also reserves the right to utilize impeachment documents not listed herein.**

Plaintiff reserves the right to object to the admissibility of any exhibit being offered by Defendant on the basis of foundation, authenticity, relevance, and admissibility. Plaintiff further reserves the right to object to any exhibit being offered by Defendant which has been improperly or untimely disclosed, and not previously produced during the normal course of discovery proceedings as mandated by FRCP 26. Plaintiff further reserves the right to object to the relevance of any exhibit being offered by Defendant that is more prejudicial than probative. Plaintiff further reserves the right to object to any exhibit being offered by Defendant that does not meet a hearsay exception. Plaintiff further reserves the right to object to any exhibit being offered by Defendant that may violate HIPAA and the use of such exhibit at trial if not properly offered for witness impeachment purposes. Plaintiff further reserves any and all other remaining evidentiary objections for trial.

- d. Electronic evidence: The parties do not intend to present any electronic evidence for purposes of jury deliberations at this time.

e. Depositions:

i. Plaintiff may offer the following depositions:

Deposition of Brian Cook

3:25-4:23

30:5-32:12 AFM objects to this testimony as irrelevant.

35:13-40:2 AFM objects to this testimony as irrelevant.

40:20-41:7 AFM objects to this testimony as irrelevant.

45:23-47:15 AFM objects to this testimony as irrelevant.

55:7-59:5 AFM objects to this testimony as irrelevant.

62:4-66:23 AFM objects to this testimony as irrelevant.

94:5-95:10

106:3-109:8

121:5-125:14 AFM objects to this testimony as irrelevant.

141:9-143:15 AFM objects to this testimony as irrelevant and prejudicial, as it relates to the bad faith claim that has been dismissed.

150:15-155:10 AFM objects to 150:15-153:25 as irrelevant and prejudicial and objects to 154:1-155:10 as calling for speculation and argumentative.

160:14-162:18 AFM objects to 162:7 (beginning with “And”) -167:18 as irrelevant.

166:8-167:21 AFM objects to 166:22-167:21 as irrelevant.

179:1-180:6 AFM objects to 179:1-13 as irrelevant and prejudicial.

190:8-18

3:23-4:3

12:16-14:10

15:10-16:9

17:6-18:13

37:1-40:1 AFM objects to 37:24-40:1 as irrelevant.

43:17-45:7

63:16-66:7 AFM objects to 63:16-65:4 as hearsay, as duplicative and needlessly cumulative in that it purports to summarize prior testimony, and as unduly prejudicial in that it incorrectly summarizes prior testimony. FRE 403

ii. Defendant may offer the following depositions:

AFM provides the following counter-designations:

Brian Cook Rule 30(b)(6) Deposition

47:16-21 Treasure Island objects to this testimony as not responsive to the question and on grounds of relevance, foundation, lack of personal knowledge, lack of expertise, hearsay, and undue prejudice..

51:10-23 [if relevance objections are overruled] Treasure Island objects to this testimony on grounds of relevance, foundation, lack of personal knowledge, lack of expertise, hearsay, and undue prejudice.

54:5-14 [if relevance objections are overruled] Treasure Island objects to this testimony on grounds of relevance, foundation, lack of personal knowledge, lack of expertise, hearsay, and undue prejudice.

60:18-62:3 [if relevance objections are overruled] Treasure Island objects to this testimony on grounds of relevance, foundation, lack of personal knowledge, lack of expertise, hearsay, and undue prejudice.

67:7-25 [if relevance objections are overruled] Treasure Island objects to this testimony on grounds of relevance, foundation, lack of personal knowledge, lack of expertise, hearsay, and undue prejudice.

Brian Cook Volume I

6:22-7:8

8:3-13

9:3-25

14:11-15:9 Treasure Island objects to this testimony on grounds of relevance, foundation, lack of personal knowledge, lack of expertise, hearsay, and undue prejudice.

18:21-19:6

45:8-46:18 Treasure Island objects to this testimony on grounds of relevance, foundation, lack of personal knowledge, lack of expertise, hearsay, and undue prejudice.

f. Objections to Depositions: The parties otherwise object to the use of deposition transcripts and videotaped depositions of any other witnesses offered by the parties, to the extent allowable by the rules of evidence, and consistent with the rules of unavailability.

VIII. WITNESSES

The following witnesses may be called by the parties at trial:

a. Plaintiff's witnesses.

1. Courtney Barnaby
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109

2. Brad Anthony
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109

3. Tara Cummins
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109
4. Gerry Griffis
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109
5. Kenny Cho
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109
6. Craig Taylor
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109
7. Margo Porter
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109
8. David DeLeon
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109
9. Employee 77292
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109
10. Employee 405358
c/o Treasure Island Hotel & Casino
3300 Las Vegas Blvd
Las Vegas, NV 89109
11. Dr. Angela L. Rasmussen
c/o Hunton Andrews Kurth LLP
2200 Pennsylvania Ave. NW
Washington, DC 20037

1 12. Dr. Alex LeBeau
2 c/o Hunton Andrews Kurth LLP
3 2200 Pennsylvania Ave. NW
4 Washington, DC 20037

5 13. Joe Lewnard
6 c/o Hunton Andrews Kurth LLP
7 2200 Pennsylvania Ave. NW
8 Washington, DC 20037

9 14. Brian Twellman
10 c/o Hunton Andrews Kurth LLP
11 2200 Pennsylvania Ave. NW
12 Washington, DC 20037

13 15. Dr. Kevin Cahill
14 c/o Hunton Andrews Kurth LLP
15 2200 Pennsylvania Ave. NW
16 Washington, DC 20037

17 16. Timothy Yessman
18 c/o Hunton Andrews Kurth LLP
19 2200 Pennsylvania Ave. NW
20 Washington, DC 20037

21 **b. Defendant's witnesses.**

22 1. John Baker
23 FM Global
24 Staff Vice President, Executive General Adjuster
25 May be contacted through AFM's counsel
26 Robins Kaplan LLP
27 800 LaSalle Avenue, Suite 2800
28 Minneapolis, MN 55402

2. Brian G. Bueche
Senior Production Underwriter
Affiliated FM Insurance Company
May be contacted through AFM's counsel
Robins Kaplan LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

3. David Carroll
Previously with FM Global, since retired
May be contacted through AFM's counsel
Robins Kaplan LLP

800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

4. Jeffrey Casillas
FM Global
May be contacted through AFM's counsel
Robins Kaplan LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

5. Brian Cook
Previously with FM Global, since retired
May be contacted through AFM's counsel
Robins Kaplan LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

6. Maxine Walker
FM Global
Vice President, Division Claims Manager
May be contacted through AFM's counsel
Robins Kaplan LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

7. Jason Wing, CPCU
FM Global
Operations Vice President & Sr. General Adjuster
May be contacted through AFM's counsel
Robins Kaplan LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

8. Mark Newton
AFM Expert
Executive Vice President of J.S. Held
3101 North Central Avenue, Suite 670
Phoenix, AZ 85012
May be contacted through AFM's counsel
Robins Kaplan LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

9. Mark A. Roberts, M.D., Ph.D.
AFM Expert
Principal Scientist

Exponent
May be contacted through AFM's counsel
Robins Kaplan LLP
800 LaSalle Avenue, Suite 2800
Minneapolis, MN 55402

Defendant reserves the right to call rebuttal and/or impeachment witnesses not listed herein at trial; and

Defendant reserves the right to call any witnesses identified in Plaintiff's and Defendant's FRCP 26(a)(1) and/or FRCP 26(a)(3) disclosures and supplements thereto, as well as any witness identified in Defendant's written discovery responses.

IX. AVAILABILITY FOR TRIAL AND TIME TO FILE MOTIONS

The attorneys or parties have met and jointly offer these three trial dates:

1.) December 9, 2024 2.) March 3, 2025 3.) March 10, 2025.

It is expressly understood by the undersigned that the Court will set the trial of this matter on one of the agreed-upon dates if possible; if not, the trial will be set at the convenience of the Court's calendar.

Additionally, the Parties shall file any Motions in Limine 90 days before trial.

X. ESTIMATED TIME FOR TRIAL

Plaintiff estimates that the trial will take a total of five (5) to ten (10) days. Defendant estimates that the trial will take a total of eight (8) to twelve (12) days. A jury trial has been requested by Defendant and Plaintiff.

XI. CERTIFICATION OF THE PARTIES

The parties hereby certify that they considered consent to trial by a magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, use of the Short Trial Program (General Order 2013-01), and the use of alternative dispute-resolution processes including mediation, arbitration, and early neutral evaluation. However, the parties have not agreed to trial by a magistrate judge or the use of the short trial program.

IT IS SO PROPOSED.

DATED this 29th day of April, 2024.

DATED this 29th day of April, 2024.

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/s/ Renee M. Finch

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*Admitted *pro hac vice*

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/s/ Scott G. Johnson

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*Admitted *pro hac vice*

Case Name: *Treasure Island, LLC v. Affiliated FM Insurance*
Case No.: 2:20-cv-00965-JCM-EJY

XI.

ACTION BY THE COURT

This case is set for court/jury trial on the fixed/stacked calendar on **March 10, 2025, at 9:00 a.m.** in Courtroom 6A.

Calendar call will be held on **March 5, 2025, at 1:30 p.m.** in Courtroom 6A. The deadline for the Parties to file Motions in Limine and/or Motions for Sanctions will be **January 12, 2025.**

This pretrial order has been approved by the parties to this action as evidenced by their signatures or the signatures of their attorneys hereon, and the order is hereby entered and will govern the trial of this case. This order may not be amended except by Court order and based upon the parties' agreement or to prevent manifest injustice.

DATED April 30, 2024


UNITED STATES DISTRICT JUDGE